IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

BRIAN MICHAEL ARANDA,

Defendant and Respondent.

S214116



Court of Appeal Case No. E056708
Riverside County Superior Court No. RIF154701
The Honorable Michele D. Levine, Judge

# OPENING BRIEF ON THE MERITS

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES



### STATUTES

**Penal Code:**

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## INTRODUCTION

Defendant, Brian Aranda, was prosecuted for first degree murder. At the conclusion of the evidence, the jury was sent to deliberate with four verdict forms. At the defendant's request, the jury was given a "Guilty" form for the singularly charged count of first degree murder, a "Guilty" form for each of the uncharged but necessarily included lesser offenses, and a single "Not Guilty" verdict form. After several days of deliberations, an exasperated foreperson expressed to the court that the jury was deadlocked. The Court inquired of the foreperson regarding the vote split and was informed that there were no votes for first degree murder, one vote for second degree

murder, two votes for voluntary manslaughter and nine votes for not guilty. Once the foreperson expressed the deadlock to the court, the defendant requested the jury be provided with a separate "Not Guilty" form for first degree murder, contrary to his earlier insistence that the jury receive only one "Not Guilty" form. The trial court denied this request and sent the jury back to deliberate further. Slightly less than an hour later, the foreperson again informed the court that the jury was hopelessly deadlocked and, as a result, the trial court declared a mistrial.

Following the declaration of a mistrial, the matter was set for retrial and defendant filed a once-in-jeopardy motion. The defendant argued that the trial court violated the partial acquittal rule as annunciated in *Stone v. Superior Court* (1982) 31 Cal.3d 503. The motion court agreed and granted defendant's motion as to the charge of first degree murder. The motion court held that pursuant to *Stone,* there was no manifest legal necessity to grant the mistrial due to the failure of the trial court to first provide the jury with a "Not Guilty" verdict form on first degree murder. This would have enabled the jury, had they so desired, to render a partial verdict, acquitting defendant on the charge of first degree murder while deadlocking as to the lesser included offenses. As a result, the motion court found that double jeopardy protections prohibited the prosecution from retrying defendant on the charge of first degree murder, but allowed for retrial on the lesser included offense of second degree murder.

Ten days after the motion court's initial ruling, the United States Supreme Court issued its opinion in *Blueford v. Arkansas* (2012) 566 U.S. ___ [ 132 S.Ct. 2044, 182 L.Ed. 2d 937] (*Blueford*). In *Blueford,* the High Court held that the Double Jeopardy Clause of the Federal Constitution does not require a trial court to aid a deadlocked jury in rendering a partial verdict before manifest legal necessity exists for the lawful declaration of a mistrial. As a result of the *Blueford* opinion, the People filed a motion for reconsideration.

In its motion for reconsideration, the People argued that *Stone* interpreted the federal constitutional double jeopardy provisions and thus *Blueford* now abrogated *Stone*. The People asserted that despite the *Stone* court's acknowledgment at the outset of the opinion that California courts can provide additional protections under the state constitution, this Court did not affirmatively establish a right to a partial verdict under the double jeopardy protections of the California Constitution. Rather, this Court in *Stone* conducted a purely federal constitutional analysis and contrary to *Blueford*, determined that federal double jeopardy protections require a trial court provide the jury with the opportunity to render a partial verdict before manifest legal necessity exists for a mistrial. In response, defendant argued that *Stone* instead interpreted the state constitutional double jeopardy provisions and thus *Stone* remained good law.

On reconsideration, the motion court held that *Stone* extended additional double jeopardy protections under the California Constitution. Accordingly, there was no manifest legal necessity for the declaration of the mistrial because the trial court did not first provide the deadlocked jury with the opportunity to render a partial verdict.

On appeal to the Fourth District Court of Appeal, Division Two, the appellate court affirmed the ruling of the lower court. However, the published opinion acknowledged that post-*Blueford*, there now exists ambiguity in the double jeopardy protections available to criminal defendants in California. This confusion exists because this Court in *Stone* did not expressly articulate which constitutional double jeopardy provision it was interpreting, state or federal, when it held that manifest legal necessity for the declaration of a mistrial does not arise until a deadlocked jury has first been given the opportunity to render a partial verdict.

As a result, the People requested and were granted review by this Court to settle the important question of law as to whether the United States Supreme Court's holding in *Blueford* abrogates *Stone* and to secure uniformity of decision for future defendants,

prosecutors, and trial courts who presently lack crucial guidance when facing a deadlocked jury.

## ISSUE PRESENTED

Whether the United States Supreme Court's holding in *Blueford v. Arkansas* that the Double Jeopardy Clause of the Federal Constitution does not require a trial court to assist a deadlocked jury in rendering a partial acquittal prior to the declaration of a mistrial based on manifest legal necessity abrogates *Stone v. Superior Court* (1982) 31 Cal.3d 503 (*Stone*)?

## STATEMENT OF FACTS

In the early morning hours of December 2, 2009, victim Fernando Castillo was found beaten to death in his apartment by police officers who responded to a 911 call placed by Fernando's 15-year-old daughter, Alexis Castillo. (1CT 20, 79-81.)[1] When officers arrived at the apartment in response to the 911 call, they were met by Fernando's children, Alexis and her 11-year-old half-brother, Raul Hernandez. Alexis claimed two armed men woke her up and attacked her father. (1CT 22-24.) In response, officers conducted a safety check of the residence and found Fernando dead in the bedroom between the bed and the wall. His bloody face was partially covered by a pillow. (1CT 79-80.)

After interviewing both Alexis and Raul, officers determined Alexis had made up the story about two armed male intruders. Eventually, Alexis admitted that she and her boyfriend, defendant Brian Aranda, killed Fernando, after Alexis told defendant Fernando was molesting her. Alexis confessed to police that the day before the murder she told defendant that she thought her father was about to rape her again and that defendant told her he would take care of it. Alexis admitted that she knew this meant defendant was either going to "beat the shit out of her dad" or "kill her dad." Defendant was questioned by police. (1CT 26-28.) After initially denying any relationship with Alexis, defendant admitted to police that he loved Alexis and went to her apartment on December 2, 2009, to get her away from her father. Defendant told police that Alexis texted him on December 1, 2009, and told him that her father had raped her again. Defendant admitted he wanted to get Alexis away from her father. Defendant confessed to leaving work on December 1, 2009, and to going home to arm himself with an ice pick, out of fear that Fernando had a gun, before going to Alexis' house to confront her father. Now armed, defendant went to Alexis' apartment and entered the bedroom where

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[1] Because the trial transcript is not part of the present record, the People cite the transcript of the preliminary hearing for the Statement of Facts.

he and Fernando fought. Defendant confessed that he gained the upper hand and stabbed Fernando with the ice pick repeatedly. (1CT 54, 56-58.)

An autopsy was performed on Fernando Castillo on December 3, 2009, by Dr. M. Scott McCormick. Dr. McCormick observed a total of thirty-three puncture wounds on Fernando's body. He also determined Fernando suffered from multiple bilateral rib fractures, including three rib fractures on the right and five rib fractures on the left. (1CT 79-81.)

## STATEMENT OF THE CASE

On September 9, 2010, the District Attorney of Riverside County filed an information in *People v. Brian Michael Aranda*, Riverside County Superior Court case number RIF154701, charging defendant with a violation of Penal Code section 187, subdivision (a), willful, premeditated and deliberate murder. Additionally, it was alleged pursuant to Penal Code section 12022, subdivision (b)(1), that defendant personally used a deadly and dangerous weapon, to wit, an ice pick, to commit the charged offense. (1CT 90-91.)

On November 9, 2011, trial commenced with jury selection. (1CT 215-216.) On November 29, 2011, the evidence portion concluded. On November 30, 2011, the jury began deliberations, with verdict forms for a verdict of guilty on first degree murder and all included lesser offenses and one not-guilty verdict form at the request of defendant. (2CT 374-375; RT 11-12.) On December 5, 2011, the jury foreperson notified the court that it was deadlocked. The court inquired of the foreperson regarding the deadlock and was informed (by the foreperson outside the presence of the remaining jurors) that, at present, the vote split was one for second degree murder, two for voluntary manslaughter and nine for not guilty. (RT 8-9.) The court sent the foreperson back to the jury room and directed the jury to continue deliberations. The Court then said to the attorneys, "I think today is enough," and asked, "any other opinions?" Defense counsel responded by

stating, "No, your Honor." (RT 10-11.) However, the defense then requested verdict forms on first degree murder be given to the jury based on the comments of the foreperson. (RT 10-11.) The court ruled:

> I'm not going to do it. I'll tell you why. I don't want to change horses midstream. We sent it in a certain way, and to change anything makes it seem like we're directing them as to which way to think, and I don't want to do that.

(RT 12.) After an additional 50 minutes of deliberations, the foreperson again notified the court that the jury was deadlocked. The court brought the jury back into the courtroom and asked the jurors if the court could provide any assistance that would end the stalemate. After the jurors indicated that some additional items might assist in the rendering of a verdict, the court provided the requested information and sent the jury out to further deliberate. (RT 13-15.) After an additional 40 minutes, the court again inquired of the foreperson. The foreperson informed the court that the additional deliberations were not productive and the jury was still in the same situation. (RT 16.) In response, the court found that the jury had been "at it for a couple of days" and that they "gave it [their] best shot" and declared a mistrial. (RT 16-17.) There was no objection to the declaration of the mistrial by the defense. Defense counsel merely informed the court that it was her belief that defendant had been acquitted of first degree murder based on the comments of the foreperson. (RT 20.) The court declared a mistrial and set a new jury trial date of January 23, 2012. (2CT 444.)

On March 22, 2012, defendant filed a motion to dismiss alleging that double jeopardy prevented any further prosecution. (2CT 453-469.) On May 8, 2012, the People filed an opposition to the motion. (2CT 476-492.) On May 14, 2012, the court denied the motion in part and granted the motion in part, prohibiting prosecution of first degree murder. On June 1, 2012, the People filed a motion for reconsideration in light of the United States Supreme Court's then recent decision in *Blueford* (May 24, 2012).

(2CT 499-509.) On June 18, 2012, the People's motion for reconsideration was denied. The matter was set for retrial on August 27, 2012. (2CT 512-514.)

The People filed a timely notice of appeal on July 13, 2012, in the Court of Appeal, Fourth Appellate District, Division Two. On September 12, 2013, the Court of Appeal affirmed the judgment in a published opinion by Justice McKinster, acknowledging the contradiction between *Blueford* and *Stone*. The Court of Appeal found that to the extent *Stone* was rooted in a federal constitutional analysis, it has been abrogated by *Blueford*. However, the court also found that because of the ambiguous statement at the outset of the *Stone* opinion acknowledging this Court's ability to implement greater double jeopardy protections under the State Constitution, the Court of Appeal was bound to follow *Stone* under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.

## ARGUMENT

### I.
### *Stone* Was Based On Federal Constitutional Grounds And Has Been Abrogated By *Blueford*

### A. There Is No Federal Constitutional Right To A Partial Verdict

The United State Supreme Court has rejected the proposition that the Federal Constitution requires a jury be provided with the means to render a partial verdict before manifest necessity arises for a mistrial. In *Blueford*, the State of Arkansas charged Alex Blueford with capital murder for the death of a one-year-old child. That charge included the lesser offenses of first degree murder, manslaughter, and negligent homicide. The trial court presented the jury with a set of verdict forms, which allowed the jury either to convict Blueford of one of the charged offenses, or to acquit him of all charges. Rendering a *partial verdict*, i.e. acquitting on some but not others was not an option. (*Blueford, supra*, 123 S.Ct. at p. 2046.)

After deliberating for a few hours, the jury reported that it could not reach a verdict. The trial court inquired about the jury's progress on each offense. The foreperson disclosed that the jury was unanimous against guilt on the charges of capital murder and first degree murder, was deadlocked on manslaughter, and had not voted on negligent homicide. (*Blueford, supra*, 123 S.Ct. at p. 2046.)

In response to the vote tally presented to the court by the foreperson, the trial court told the jury to continue deliberating. After deliberations resumed, Blueford's counsel asked the trial court to submit new verdict forms to the jurors, to be completed "for those counts that they have reached a verdict on." (*Blueford, supra*, 123 S.Ct. at p. 2049.) The trial court denied Blueford's request. To allow for a partial verdict, the trial court explained, would be "like changing horses in the middle of the stream," given that the jury had already received instructions and verdict forms. (*Ibid.*) When the jury returned

a half hour later, the foreperson informed the trial court that the jury had still not reached a verdict. The trial court declared a mistrial and discharged the jury. (*Ibid.*)

When the State of Arkansas subsequently sought to retry Blueford, he moved to dismiss the capital and first degree murder charges on double jeopardy grounds. The trial court denied the motion, and the Supreme Court of Arkansas affirmed on appeal. (*Blueford, supra*, 123 S.Ct. at pp. 2049-2050.) On appeal to the United States Supreme Court, Blueford argued that the foreperson's representation to the court that the jury reached a vote tally for not guilty on the murder offenses should be treated as an acquittal barring retrial on the murder offense because the vote tally indicated that a resolution of some or all of the elements of those offenses was completed in his favor by the jury. (*Blueford, supra*, 123 S.Ct. at pp. 2050-2051.)

In his argument, Blueford relied heavily on the very same case relied on by this court in *Stone*, *Green v. United States* (1957) 355 U.S. 184, as well as its progeny, *Price v. Georgia* (1970) 398 U.S. 323. The Court rejected Blueford's arguments, and specifically differentiated his case from *Green* and *Price* holding:

> In those cases, we held that the Double Jeopardy Clause is violated when a defendant, tried for a greater offense and convicted of a lesser included offense, is later retried for the greater offense. [Citations] Blueford argues that the only fact distinguishing his case from *Green* and *Price* is that his case involves a deadlock on the lesser included offense, as opposed to a conviction. In his view, that distinction only favors him, because the Double Jeopardy Clause should, if anything, afford greater protection to a defendant who is *not* found guilty of the lesser included offense.
>
> Blueford's argument assumes, however, that the votes reported by the foreperson did not change, even though the jury deliberated further after that report. That assumption is unjustified, because the reported votes were, for the reasons noted, not final. Blueford thus overlooks the real distinction between the cases: In *Green* and *Price*, the verdict of the jury

> was a final decision; here, the report of the foreperson was not.

(*Blueford, supra*, 123 S.Ct. at pp. 2051-2052.) Ultimately, this distinction drawn between the facts presented in *Blueford* and those in *Green* led to the United States Supreme Court's holding that the jury did not acquit Blueford of capital or first degree murder because the jury's deliberations had not yet concluded. Specifically, the Supreme Court held:

> It was therefore possible for Blueford's jury to revisit the offenses of capital and first degree murder, notwithstanding its earlier votes. And because of that possibility, the foreperson's report prior to the end of deliberations lacked the finality necessary to amount to an acquittal on those offenses, quite apart from any requirement that a formal verdict be returned or judgment entered.

(*Blueford, supra*, 123 S.Ct. at p. 2052.)

Next, Blueford argued that even if there was not an acquittal on the murder counts as a result of the foreperson's report of the vote, the trial court's declaration of a mistrial was still improper. According to Blueford, the impropriety arose out of the trial court's failure to take some action, whether through new partial verdict forms (*Stone* instructions) or other means, to allow the jury to give effect to the votes as reported by the foreperson. In response to this argument the Supreme Court held:

> We reject that suggestion. We have never required a trial court, before declaring a mistrial because of a hung jury, to consider any particular means of breaking the impasse—let alone to consider giving the jury new options for a verdict.

(*Blueford, supra*, 123 S.Ct. at p. 2052.) As a result, the High Court ultimately concluded:

> The jury in this case did not convict Blueford of any offense, but it did not acquit him of any either. When the jury was

> unable to return a verdict, the trial court properly declared a mistrial and discharged the jury. As a consequence, the double jeopardy clause does not stand in the way of a second trial on the same offenses.

(*Id.* at p. 2053.)

Thus, in *Blueford,* the United States Supreme Court clearly articulated that a finding of legal necessity for a mistrial does not require a trial court to provide additional options for partial verdicts to a jury once it has informed the court that it is deadlocked. As a result, under *Blueford*, defendant can be retried for first degree murder.

### B. There Is No Right To A Partial Verdict Under The California Constitution

In the instant case both the Superior Court and the Court of Appeal acknowledged that pursuant to *Blueford*, there is no federal right to a partial verdict before manifest legal necessity for a mistrial arises under the Federal Constitution. However, both lower courts also determined that the *Stone* court created a state right to a partial verdict under the California Constitution. In reality, *Stone* did not clearly articulate a right to a partial verdict under the California Constitution, and thus, because the decision rested on the Federal Constitution, it was abrogated by *Blueford.* This Court has not addressed the right to a partial verdict or the continued viability of *Stone* since the United States Supreme Court first addressed the right to a partial verdict under the Federal Constitution in *Blueford* decision published in May 2012. This decision abrogated the prior California precedent in *Stone* because the *Stone* court interpreted the federal, not state constitutional double jeopardy bars.

In *Stone*, the California Supreme Court held that when a jury indicates it has unanimously determined that a defendant is not guilty of a charged offense but reports that it is deadlocked on an uncharged lesser included offense, the trial court must offer the jury the opportunity to return a verdict of not guilty on the greater offense before it

declares a mistrial. This is known as a partial verdict and is referred to as the partial acquittal doctrine because it allows the jury to issue an acquittal on the singularly charged greater offense while failing to reach a verdict on the uncharged lesser included offenses. In the event of a partial verdict, double jeopardy prevents retrial of the defendant on the greater offense but allows the prosecution to retry the defendant on the lesser included offenses. "Failure to do so will cause a subsequently declared mistrial to be without legal necessity," with respect to the greater offense, and double jeopardy principles preclude a retrial on that offense. (*Stone, supra,* 31 Cal.3d at p. 519.)

At the outset of the *Stone* opinion, this Court recognized its ability to determine that a greater protection against double jeopardy exists under the California Constitution than the Federal Constitution. (*Stone, supra*, 31 Cal.3d at p. 510.) After making this initial observation, however, this Court *never* articulated its intention to do so. Instead, this Court went on to conduct an analysis of the requirements of double jeopardy protection under the Federal Constitution, and never reached the issue of what additional protections, if any, are provided for in the California Constitution.

This Court in *Stone* analyzed the double jeopardy issues by first addressing previous case authority, including two Court of Appeals cases, *People v. Doolittle* (1972) 23 Cal.App.3d 14, and *Magee v. Superior Court* (1973) 34 Cal.App.3d 201, which interpreted the Supreme Court's prior ruling in *People v. Griffin* (1967) 66 Cal.2d 459. In *Griffin*, as well as the Court of Appeal cases, the issue was whether or not a court could rely on the expression of the foreperson regarding the vote split which resulted in the mistrial. In each of these cases, the trial court inquired of the foreperson after declaring a mistrial, and it was determined that the expression of the foreperson alone could not be relied on as the final expression of all jurors, and thus, would not result in an acquittal or a once-in-jeopardy claim. This Court in *Stone* found this line of cases inapplicable because in *Stone*:

> clear and uncontradicted evidence revealed that the jury was prepared to render a partial verdict of acquittal of murder and the court was inclined to accept the verdict, it was only the lack of an established procedure for giving formal effect to the jury's conclusion that prevented the court from receiving such a verdict. Because of these compelling circumstances, we conclude the jury's obvious intent should be recognized here by holding that defendant was in fact acquitted of murder.

(*Stone, supra,* 31 Cal.3d at p. 514.) The *Stone* court determined that:

> [t]he primary concern of the *Griffin* court was to insure that a verdict represents the definite and final expression of the jury's intent with respect to the disposition of the factual issues presented by a particular case. The members of the jury in *Griffin* never gave any indication of a final intent to acquit the defendant of the murder charge, and the facts in *Doolittle* and *Magee* were similarly equivocal. Here, by contrast, the foreman twice declared—*prior to discharge, in open court*, and *in the presence of the other jurors*—that the jury stood firmly and finally 12 to nothing in favor of acquittal of both degrees of murder. The court then made a factual finding and legal ruling to the same effect.

(*Ibid,* italics in the original.) This factual distinction between *Griffin* and its progeny and *Stone,* resulted in this Court in *Stone* looking to other cases to address its particular factual scenario.

In *Stone*, as here, the defendant was charged with first degree murder and the jury indicated, albeit by different means than in the present case, that it was deadlocked and that the split ranged across the various degrees of murder.[2] Consequently, this Court framed the question presented as:

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[2] After the foreperson informed the court the jury was deadlocked and articulated the vote split, the *Stone* jurors were individually polled for their votes. (*Stone, supra,* 31 Cal.3d at p. 507.)

> whether the double jeopardy clause requires that trial courts, in future cases, receive a partial verdict when the jury clearly favors acquittal on a charged offense but is unable to agree on the proper disposition of an uncharged lesser included offense. If we conclude that such a procedure is constitutionally mandated, then the discharge of the jury in the present case was premature with respect to the murder offenses, and Stone could not be retried thereon even if the jury had not in fact acquitted him.

(*Stone, supra,* 31 Cal.3d at p. 514.) In other words, this Court focused its analysis on whether or not the "constitution" requires a court to take additional steps, such as providing split verdict forms for necessarily included offenses in a singularly charged case, before the requisite finding of legal necessity can be established so as not to bar future retrial. Ultimately, the *Stone* Court held that such additional steps are required before legal necessity can be established. However, the legal basis for that ruling was derived from federal precedents in analogous situations. This Court clearly conducted its analysis under the Federal and not the State Constitution.

In reaching its conclusions, this Court first analogized the facts in that case to a situation in which the People have charged at least one of the lesser included offenses separately and the jury has hung on one but not both counts. In so doing, this Court reviewed the requirements of a mistrial in a case where the prosecutor charged the lesser included offenses separately. Relying on federal case precedent, *Stone* concluded where the offenses are charged separately, the court must take a partial verdict and the People can retry only the counts on which the jury could not agree. (*Stone, supra,* 31 Cal.3d at p. 517, citing *Selvester v. United States* (1898) 170 U.S. 262, 269–270.)

This Court then determined:

> For the purpose of delineating the scope of the double jeopardy protection, we believe the situation before us to be logically indistinguishable from the case in which a greater offense and a lesser included offense are charged in separate

> counts. It would be anomalous to formulate a rule that prevents a trial court from receiving a partial verdict on a greater offense on which the jury clearly favors acquittal merely because the prosecutor elected to charge only that offense, and left it to the court to instruct on any lesser included offense supported by the evidence.

(*Stone, supra,* 31 Cal.3d at pp. 517-518.) To support this position, the *Stone* court relied on the United States Supreme Court case of *Green v. United States, supra,* 355 U.S. 184. The High Court adopted the rule that a defendant who succeeds in obtaining a reversal on appeal of a conviction of a lesser included offense may not be retried for the greater offense. (*Stone, supra,* 31 Cal.3d at p. 518.) Ultimately, it was reliance on this analogy to *Green*, a federal constitutional case originating in the Circuit Court for the District of Columbia, that led the *Stone* Court to conclude Federal Constitutional protections against double jeopardy require a trial court to provide a means for a jury to acquit a defendant on each potential offense. Thus, the *Stone* Court never addressed any state constitutional double jeopardy bars.

In fact, after reviewing the *Green* court's conclusion that "[t]he constitutional issues at stake here should not turn on the fact that both offenses were charged to the jury under one count" the very next sentence of this Court's opinion states:

> *[f]or the same reason*, we decline to perpetuate the artificial distinction that has developed between expressly charged and impliedly charged lesser included offenses.

(*Stone, supra*, 31 Cal.3d at p. 518, emphasis added.) By relying specifically on *Green* as the crux of its analysis, this Court made it abundantly clear that, at least for this portion of its opinion, its decision was firmly grounded in rights the *Stone* Court deemed provided by the Federal Constitution and not any additional rights this Court could have but failed to expressly declare under the State Constitution.

This Court analyzed only federal double jeopardy precedent to reach its determination that defendants have a right to a partial verdict in a singularly charged case. State constitutional precedent was *never* analyzed or discussed. While the United States Supreme Court never had the opportunity to review *Stone*, that does not compel the conclusion that the *Stone* court's ruling was also based on state constitutional protections, especially when an analysis of *Stone's* holding reveals its clear federal constitutional underpinnings. Consequently, when the United States Supreme Court decided *Blueford* in May of 2012, and rejected the proposition that the Federal Constitution granted defendants a right to partial verdicts, this Court's decision in *Stone* was abrogated on this point.

Any remaining question as to whether or not the *Stone* Court was interpreting the federal constitution as opposed to creating a new protection under the California Constitution can be resolved by reading the dissent in *Blueford*. In her dissent, Justice Sotomayer cites to *Stone* four separate times in furtherance of her opinion that there should be a contrary application of federal double jeopardy protections than that ultimately adopted by the *Blueford* majority. At one point, Justice Sotomayer cites *Stone* and concludes, unlike the majority, that she, "would hold that the double jeopardy clause requires a trial judge in an acquittal-first jurisdiction, to honor a defendant's request for a partial verdict before declaring a mistrial on the ground of jury deadlock." (*Blueford, supra*, 123 S.Ct. at p. 2058.)[3] Justice Sotomayer's reliance upon *Stone* as a contrary interpretation of the federal double jeopardy protections further indicates that the *Stone*

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[3] Acquittal-first jurisdictions, such as California, instruct jurors that they should unanimously issue a "verdict" of not guilty, or must "acquit" the defendant of the singularly charged greater offense, before considering the uncharged lesser included offense. Despite this instruction, jurors are entitled to revisit earlier votes during the course of deliberations. Thus, an informal vote may occur in which the jurors agree that the defendant is not guilty of first degree murder and as a result the jury moves on to deliberate on second degree murder. However, these votes are not final until the verdict forms are signed. (See e.g., *Stone, supra,* 31 Cal.3d at pp. 511–512, fn. 5.)

court was in fact interpreting the provisions of the Federal and not the State Constitution when it rendered its opinion. Additionally, it is clear from Justice Sotomayer's dissent that the effect of *Blueford* was to abrogate *Stone* on this issue.

### C. The Court of Appeal Erred In Relying On *Fields*

The Court of Appeal affirmed the judgment in the instant case by looking to this Court's post-*Stone* authority of *People v. Fields* (1996) 13 Cal.4th 289, for support. Although acknowleding the ambiguity of the constitutional basis for *Stone's* partial acquittal rule, the appellate court indicated it was bound by *Fields* pursuant to *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455. The Court of Appeal's reliance on *Fields* to interpret *Stone* is misplaced, as *Fields* did not directly address the partial acquittal doctrine and thus does not resolve the question of *Blueford*'s impact upon the *Stone* holding. While *Fields* does address the application of the *implied* acquittal doctrine which, like the *Stone* instruction finds a legal basis in the Double Jeopardy Clause, these two doctrines are distinct and have different constitutional underpinnings.

The implied acquittal doctrine, such as that discussed in *Fields*, addresses the legality of retrying a defendant on the greater offense when the jury hangs on that offense *but returns a verdict* on the lesser included offense.[4] That did not occur in *Stone*, nor did it occur in the instant case. Moreover, *Fields* expressly rejected a state or federal constitutional underpinning for its holding on implied acquittal; rather, the *Fields* Court

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[4] As stated above, the *partial* acquittal doctrine applies only when a jury agrees the defendant is not guilty of the singularly charged greater offense but is unable to reach a verdict on the uncharged lesser included offenses. In order to record this partial verdict the court provides a jury with "not guilty" verdict forms on both the singularly charged greater offense and each of the uncharged lesser included offense. Double jeopardy protections bar retrial of the defendant only on the greater offense. Allowing the People to retry the defendant on the uncharged lesser included offenses on which the jury could not reach unanimous verdicts.

grounded its analysis in the statutory mandate of Penal Code section 1023.[5] Thus, the *Fields* court engaged in a decidedly statutory analysis, not a constitutional one, and therefore does not resolve the ambiguity in California law created by *Blueford*. (*Fields*, *supra*, 13 Cal.4th at pp. 290-291.) In fact, prior to *Blueford*, it appears that no appellate court has analyzed whether this Court's decision in *Stone* was based on state or federal law, because there was no contrary federal case authority giving rise to that question.

### D. Because There Is No Federal Or California Right To A Partial Verdict, There Was Sufficient Legal Necessity To Warrant A Mistrial In This Case And Defendant Can Be Retried On The Charge Of First Degree Murder

In *Blueford*, as here, "[t]here were separate forms to convict on each of the possible offenses, but there was only one form to acquit, and it was to acquit on all of them." (*Blueford, supra*, 123 S.Ct. at p. 2053.) Thus, under *Blueford*, the jury in the instant case had all necessary verdict forms required under the Federal Constitution. Yet the jury was unable to reach an agreement that would render a unanimous verdict on any of the provided forms, i.e., guilty of the charged first degree murder, guilty of one of the uncharged but necessarily included lesser offenses, or not guilty of murder. Because there is no right under the Federal or California Constitutions to a partial verdict, the jury's inability to agree to one of these verdicts gave rise to the requisite legal necessity to enable the trial court's declaration of a mistrial without implicating the defendant's double jeopardy rights in a retrial on the count of first degree murder. Therefore, the People should be allowed to prosecute the defendant for first degree murder.

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[5] Penal Code section 1023 provides: "When the defendant is convicted or acquitted or has been once placed in jeopardy upon an accusatory pleading, the conviction, acquittal, or jeopardy is a bar to another prosecution for the offense charged in such accusatory pleading, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that accusatory pleading."

## II.
## The Risk To The Fair Administration Of Justice Outweighs The Benefit Of Extending Double Jeopardy Protections Under The State Constitution

Under *Blueford*, the states can provide additional double jeopardy protections under a state constitution. To do so, however, would place at risk the fundamental fairness of the jury process. This Court should not adopt a rule that a trial judge's discharge of a jury deadlocked on a single charged offense and its lesser included offenses always requires obtaining partial verdicts to determine which offenses may be retried. The province of the jury in our criminal justice system is sacrosanct. Unwarranted intrusions by the court into the traditional province of a jury necessarily threatens the independence of the resulting verdict, thereby demeaning the legitimacy of the jury process so as to jeopardize justice itself.

Justice is threatened by partial verdict inquiries because they can lead to a verdict that is the result of a pressured compromise by jurors who are frustrated from prolonged deliberations. The ultimate result of this unnecessary intrusion into the deliberative process is tantamount to a directed verdict. In short, requiring the jury to return a partial verdict following a deadlock without allowing deliberations to fully conclude is more likely to yield a verdict that was made in the spirit of compromise, and not a just adjudication of the charged criminal conduct. Such a practice also gives rise to the further erosion of the jury system; for example, will juries next be given special interrogatories to insure structured deliberation on actus reus and mens rea?

Historically "the law has invested Courts of justice with the authority to discharge a jury from giving any verdict whenever, in their opinion, taking all the circumstances into consideration, there is manifest necessity for the act, or the ends of public justice would otherwise be defeated." (*Wade v. Hunter* (1949) 336 U.S. 684, 689-690.) This rule "attempts to lay down no rigid formula." (*Id.* at p. 690.) Rather, it "command[s] courts in considering whether a trial should be terminated without judgment to take all

circumstances into account, and thereby forbid[s] the mechanical application of an abstract formula." (*Id.* at p. 691, internal quotation marks omitted; see also *Illinois v. Somerville* (1973) 410 U.S. 458, 464 [noting that "virtually all of the [manifest necessity] cases turn on the particular facts"].) A trial judge's belief that the jury is unable to reach a verdict is, of course, "the classic basis for a proper mistrial." (*Arizona v. Washington* (1978) 434 U.S. 497, 509.) Reviewing courts afford great deference to a trial judge's decision to grant a mistrial when the court considers the jury deadlocked. (*Id.* at p. 510.) That is because "if retrial of the defendant were barred whenever an appellate court views the 'necessity' of a mistrial differently from the trial judge, there would be a danger that the latter, cognizant of the serious societal consequences of an erroneous ruling, would employ coercive means to break the deadlock." (*Id.* at pp. 509-510.) Therefore, absent federal constitutional necessity, this Court should expressly decline to require the mechanical application of any rigid formula when trial judges decide whether jury deadlock warrants a mistrial and concomitantly preserve the integrity of the jury system.

This case is a perfect example of how a directed verdict would result from the promulgation a state requirement that the jury consider a partial verdict. Here, the trial court submitted four verdict forms to the jury, permitting verdicts of "guilty" on first degree murder or on any one of the lesser included offenses, or "not guilty." Defendant did not proffer any forms that purported to allow the jury to render verdicts finding him "not guilty of first degree murder," or "not guilty" of any one of the four lesser-included offenses. Instead, defendant made the strategic decision to withhold individual "not guilty" verdict forms on first degree murder and each of the lesser included offenses, in favor of providing the jury with a single "not guilty" form. It was not until the foreperson indicated a deadlock that defendant requested that the trial judge submit additional partial verdict forms to the jury during its deliberations. By the time this request was made, the jurors had been deliberating for several days, and were showing evidence of exhaustion. One juror even threw something in the deliberation room out of frustration. This is the

exact type of circumstance which threatens the fair administration of justice by creating an environment ripe for coerced verdicts. Under these circumstances, the trial court did not abuse its discretion by denying defendant's request because the verdict forms and instructions had already been submitted to the jury, and to go back and change the forms and instructions would have communicated to the embattled jury that the court wanted it to compromise a result which would have been nothing less than a directed verdict on these facts.

It is precisely due to this inherent danger of jury coercion that the majority of other jurisdictions have rejected defense requests for additional double jeopardy protections under their state constitutions. (*See, e.g., People v. Richardson* (Colo. 2008) 184 P.3d 755, 763; *People v. Hall* (Ill.Ct.App. 1975) 324 N.E.2d 50, 52-53; *State v. Bell* (1982) 322 N.W.2d 93; *Commonwealth v. Roth* (Mass. 2002) 776 N.E.2d 437, 450; *State v. Booker* (N.C. 1982) 293 S.E.2d 78, 80; *People v. Hickey* (Mich.Ct.App. 1981) 303 N.W.2d 350, 352; *State v. McKay* (Kan. 1975) 535 P.2d 945, 947.)[6]

In *Commonwealth v. Roth*, the Massachusetts Supreme Court held "that judges should not initiate any inquiry into partial verdicts premised on lesser included offenses within a single complaint or count of an indictment." (*Roth, supra*, 776 N.E.2d at p. 450.) The court first concluded that the Massachusetts Rules of Criminal Procedure do not permit partial verdicts and then moved to the question of whether state constitutional double jeopardy principles nevertheless require such verdicts. (*Id.* at pp. 445–446.) The court began its double jeopardy analysis by acknowledging that partial verdict inquiries carry "significant potential for coercion" and that "deadlocked juries are particularly

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[6] Prior to the clarification of federal double jeopardy protections by the United States Supreme Court in *Blueford*, a minority of jurisdictions determined that double jeopardy principles did require a partial verdict of the greater offense where the jury reaches agreement as to the greater offense but is deadlocked as to the lesser included offense. (*See, e.g., Whiteaker v. State* (Ala.Ct.App. 1991) 808 P.2d 270, 278; *State v. Tate* (Conn. 2001) 773 A.2d 308, 321; *State v. Pugliesse* (N.H. 1980) 422 A.2d 1319, 1321.)

susceptible to coercion." (*Id.* at p. 447.) The court then elaborated on the coercion problem:

> [T]he import of the [partial verdict] inquiry is unmistakable: "Can't you at least decide a part of this case?" The inquiry, by its nature, plays on the deadlocked jurors' natural sense of frustration, disappointment, and failure. The jurors are confronted with the request, and asked to absorb its inherent complexity, at the worst possible time, when they are tired, anxious to be discharged, and perhaps angry at fellow jurors whom they blame for failing to reach agreement. While technically inquiring only as to what the jurors have already agreed on, the request for partial verdicts broken down by lesser included offenses implicitly suggests that the jurors should try just a little bit harder to come back with at least a partial decision to show for all of their efforts.

(*Id.* at p. 448.) The second problem the *Roth* court identified is the natural human propensity of jurors to compromise in an attempt to reach a final verdict. In particular, the court noted that "a judge's request that the jury divulge the substance of their 'final' vote may force the jury to report as 'final' some votes that were not intended to be 'final' unless they resolved the entire case." (*Id.* at pp. 448–449.) For these reasons, the court concluded that the Massachusetts state double jeopardy provisions do not require partial verdict inquiries.

In *People v. Richardson,* Colorado reached the same conclusion. (*Richardson, supra*, 184 P.3d at p. 758) In *Richardson*, the defendant faced a singularly charged count of first degree murder. The jury informed the trial court that it was hopelessly deadlocked on a lesser-included offense after having agreed the defendant was not guilty of first and second degree murder. The verdict forms did not allow the jury to return a partial verdict but rather required the jury agree as to a degree of guilt or to acquittal. The jury could not agree and the trial court found manifest necessity to declare a mistrial.

The defendant moved to dismiss charges of both first and second degree murder on double jeopardy grounds. (*Id.* at pp. 758-760.) Upon review, the Supreme Court of Colorado found sufficient manifest necessity to warrant the declaration of a mistrial and rejected defendants' claim that double jeopardy barred retrial on either first or second degree murder. (*Id.* at p. 762.) In so doing, the court adopted the reasoning of *Roth*, and agreed that partial verdict inquiries are inherently coercive. (*Id.* at pp. 763-764.) So as to obviate this inherent potential for undue influence on the jury, the *Richardson* court went on to hold that, "a jury's deliberations should not be given the legal force of a final verdict until the end result is expressed on a verdict form returned in open court." (*Id.* at p. 764.)

In *People v. Hall*, the Supreme Court of Illinois addressed similar concerns. (*Hall, supra*, 324 N.E.2d 50.) There, the court concluded that the rendering of a partial verdict does not serve the interests of justice. The *Hall* court recognized that jurors may believe the defendant is guilty of the greater charge, but deliberately focus their initial deliberations on the lesser included offenses, "in a spirit of compromise to reach a verdict." (*Hall, supra*, 324 N.E.2d at p. 52.) That is, a partial verdict may not be a true reflection of the jurors' determination, until the verdict forms are signed.

In *State v. Bell*, the Supreme Court of Iowa held that the defendant could be retried on first degree murder. (*State v. Bell, supra,* 322 N.W.2d 93.) In Bell's original trial the jury returned a verdict of guilty on second degree murder, only to have a juror disagree with the verdict during the polling of the jury resulting in the declaration of a mistrial. In challenging the retrial on double jeopardy grounds, Bell argued that the jury acquitted him of first degree murder. To address this argument the Iowa Supreme Court looked to California case law and this Court's opinion in *Griffin* for guidance:

> A similar argument was made and rejected in *People v. Griffin*, 66 Cal.2d 459, 58 Cal.Rptr. 107, 426 P.2d 507 (1967). That case involved a trial for first degree murder which ended in a mistrial because the jury could not agree on

> a verdict. Afterward the jury foreman disclosed and the parties stipulated that the deadlock was caused by ten jurors voting for acquittal and two for second-degree murder. In rejecting the defendant's argument that he had been implicitly acquitted of first degree murder, the court said:
> "There is no reliable basis in fact for such an implication, for the jurors had not completed their deliberations and those voting for second degree murder may have been temporarily compromising in an effort to reach unanimity. Nor need we 'imply' an acquittal as a matter of policy. Defendant has not had a conviction of a lesser offense overturned on appeal, and it is therefore not necessary to prohibit retrial for any greater crime to protect the right to appeal."

(*State v. Bell, supra,* 322 N.W.2d at p. 95.) The *Bell* court went on to rely on the reasoning of *Griffin* and rejected dissimilar holdings of other courts and the subsequent "distinguishable" decision of this Court in *Stone*. Ultimately, the court rejected Bell's claim that he was acquitted of first degree murder because the jury's deliberations were not completed and the votes as relayed to the court could have been the result of a temporary compromise.

In *People v. Hickey*, the Michigan Court of Appeal held that protection against double jeopardy does not require a trial court to inquire as to the status of jury deliberations on included offenses before it declares a mistrial due to a hung jury. (*Hickey, supra,* 103 Mich.App. 350.) Again, looking to this Court's decision in *Griffin*, the *Hickey* court concluded that polling the jury on the various possible verdicts submitted to it would constitute an unwarranted and unwise intrusion into the province of the jury. (*Hickey, supra,* 103 Mich.App. at p. 353.)

Likewise in *State v. Booker*, the Supreme Court of North Carolina relied on *Hickey* and *Griffin* to reject both the implementation of implied acquittal (which is a statutory right in California) and the use of partial verdict forms. (*State v. Booker, supra,* 293 S.E.2d 78.) Like its brethren, the *Booker* court also concluded that to do so, would

be to engage in an "unwise intrusion into the province of the jury." (*State v. Booker, supra,* 293 S.E.2d at p. 81.)

This Court has long recognized the dangers of intervening into the province of the jury. Prior to the *Stone* decision, this Court decided the related case of *People v. Griffin* (1967) 66 Cal.2d 459. There, the relevant issue was not the manifest necessity of partial verdicts, but rather the related doctrine of implied acquittal. Although this Court in *Griffin* did not address whether or not double jeopardy principles under the California Constitution require the use of partial verdict forms, *Griffin* is still key to answering that question. As discussed above, courts throughout the United States have looked to the *Griffin* opinion when analyzing the potential consequences of expanding double jeopardy protections by imposing a *partial* verdict rule. To that end, this Court should also rely on its previous opinion in *Griffin* to thoroughly examine the intrinsic pressures created by a partial verdict inquiry. In so doing, this Court should evaluate the inherent risks to the criminal justice system created by a mechanical application of a rigid formula to determine the existence of manifest legal necessity; risks which are only further exacerbated by unwarranted invasions into the jury deliberation process. Absent a federal constitutional requirement of a partial verdict to find manifest legal necessity under double jeopardy principles, this Court should heed the wise policy considerations it first advanced in *Griffin* to allow retrial on the first degree murder charge in the instant case. The potential to jeopardize the impartiality of the verdict and to undermine the integrity of the jury process is far too great to justify the creation of uncalled for and formulaic state rules that are neither necessary nor mandated by constitutional double jeopardy principles.

## III.
## The California Implied Acquittal And Acquittal-First Doctrines Sufficiently Protect Both a Criminal Defendant's Double Jeopardy Rights And The Inviolable Province Of The Jury

In California, even without extending double jeopardy protections to include the right to partial acquittal, criminal defendants are still protected by the implied acquittal doctrine and the acquittal-first requirement. These protections ensure a fair and just verdict without the threat to the province of the jury inherent in a partial verdict rule.

California has an implied acquittal doctrine provided for in Penal Code section 1023 and affirmed by this Court in *People v. Fields, supra,* 13 Cal.4th 289. That doctrine ensures that a criminal defendant cannot be retried on a greater offense if a jury returns a verdict of guilty on a lesser offense, but is unable to reach a verdict on the greater offense. Thus, California law already provides criminal defendants with protection against retrial on the greater offense should they be convicted of a lesser.

Additionally, California is an "acquittal-first" jurisdiction. In an "acquittal-first" state, strict step-down instructions and any associated verdict forms clearly and unambiguously instruct jurors that they must unanimously issue a "verdict" of not guilty, or must "acquit" the defendant of the greater offense before considering the lesser included offense. (See *Stone, supra,* 31 Cal.3d at p. 519.) Indeed, a lesser included offense's elements are a subset of the elements of the charged (greater) offense. (*Schmuck v. United States* (1989) 489 U.S. 705, 719.) These instructions guide jurors through the formidable task of considering a defendant's guilt or innocence for a crime that includes lesser degrees of blameworthiness. The question is not merely guilt or innocence, but also *if guilt*, what level of culpability - the government's charge or a lesser included offense. Moreover, jurors are entitled to revisit earlier votes during the course of deliberations, providing the jurors with the opportunity to fully deliberate before rendering a final recordable verdict via a signed verdict form.

In California, the jury is required to determine the degree of the offense committed and any disagreement amongst the jurors regarding the level of culpability of the defendant is guided by the implied acquittal doctrine. (*Fields, supra,* 13 Cal.4th 289; Pen. Code, § 1023.) Thus, should a criminal jury determine a defendant has not committed the charged offense but rather a lesser included offense, there is no risk that the defendant will face retrial on the greater offense. The statutory mandate of Penal Code section 1023 is triggered and the greater offense is dismissed pursuant to the implied acquittal doctrine. Consequently, this Court need not extend double jeopardy principles to implement a partial verdict rule that necessarily invades the province of the jury and undermines the integrity of the criminal process because our state's acquittal-first rule and the statutorily embodied implied acquittal doctrine provide ample safeguards to a criminal defendant.

## CONCLUSION

Since it is clear that neither the People of the State of California nor the Legislature intended additional requirements for establishing legal necessity under the California Constitution, the People respectfully request that this Court deem the United States Supreme Court case of *Blueford* to be controlling in this matter. As a result, the People ask this Court to reverse the double jeopardy finding of the lower court and remand this matter for trial on the charge of murder in the first degree.

Dated: February 14, 2014

Respectfully submitted,

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## CERTIFICATE OF WORD COUNT

Case No. S214116

The text of the **OPENING BRIEF ON THE MERITS** in the instant case consists of 8,826 words as counted by the Microsoft Word program used to generate the said **OPENING BRIEF ON THE MERITS.**

Executed on February 14, 2014.

Respectfully submitted,

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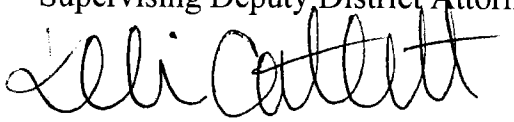

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**DECLARATION OF SERVICE BY MAIL**
Case No. S214116

I, the undersigned, declare:

I am a resident of or employed in the County of Riverside; I am over the age of 18 years and not a party to the within action. My business address is 3960 Orange Street, Riverside, California. That on February 14, 2014, I served a copy of the within, **OPENING BRIEF ON THE MERITS**, on the following, by placing a copy of same in postage prepaid envelopes addressed as follows:

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Each envelope on February 14, 2014, was sealed and deposited in a United States mailbox in the City of Riverside, State of California, with postage thereon fully prepaid.

I declare the foregoing to be true and correct under penalty of perjury.

Executed on February 14, 2014, at Riverside, California.

**DECLARANT**